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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/412,459	10/04/1999	NICHOLAS P. VAN BRUNT	A792.12-0006	9671

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EXAMINER

YU, JUSTINE ROMANG

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 07/09/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

**Office Action Summary**

Application No.

09/412,459

Applicant(s)

VAN BRUNT, NICHOLAS P.

Examiner

Justine R Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 May 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. This office action is responsive to the amendment filed on 5/7/03. As directed by the amendment, claims 1, 5, 11, 13-16, 27, 30-32, 35, and 56 and 57 were amended, and no claim was canceled nor added. Thus, claims 1-57 are presently pending in this application.

2. Claims 9 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 16.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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4. Claims 1, 3-5, 7, 8, 11-16, 19, 20, 22, 27, 36-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Abramov et al (5,806,512).

Abramov teaches a resuscitation method comprising steps of applying an oscillating compressive force which having a steady state force component (weight of the chest cuff 14) and oscillating compression force (the inflation and deflation of the chest cuff), and supplying air pressure to a mouthpieces 38, the air pressure having a steady state air pressure component about 5 cm of H<sub>2</sub>O (greater than atmospheric pressure) at an end of the exhalation phase and an oscillating air pressure component fluctuating to about 20cm of H<sub>2</sub>O (greater than atmospheric pressure) at the end of the inhalation phase (column 4, lines 32-35). Abramov in figures 1, 3 and 4 further shows the mouthpiece chamber 38 having a mouth port 46a, an outlet port (46g, 46h), and an air supply port 40. Abramov has the same structure as claimed and would be able to perform the same method steps.

Regarding claim 44, figure 4 of Abramov shows the port 46g would be able to supply fresh air.

5. Claims 11, 12, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Schneider, Sr. (5,833,711).

Schneider teaches a CPR system having an inflatable vest 100 for applying restrained force (steady state force component) and compressive force (oscillating force component) to a patient. Schneider in column 7 lines 7-12 further teaches that an oxygen-enriched gaseous medium for assistance in breathing is supplied through a mask (mouthpiece). Thus, Schneider

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discloses the step of supplying air pressure to a mouthpiece with a steady state air pressure component greater than atmospheric pressure.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 6, 17, 18, 21, 23-26, and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alferness.

Alferness shows all the method limitations of the invention as claimed but does not disclose values of relative pressure. However, such limitations are considered as obvious design choices based on user preference to suit various needs and applications, which are further capable of being accomplished by Alferness.

***Response to Arguments***

8. Applicant's arguments filed 5/7/03 have been fully considered but they are not persuasive.

The applicant on page 11, the first full paragraph of the remarks argues that Abramov et al does not teach a steady state air pressure component that is greater than atmospheric pressure. The applicant on page 11 the second full paragraph further argues that Abramov does not disclose that either of these pressures is maintained throughout the entire breathing cycle because

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Abramov in column 4, lines 14-18 states that the ventilator 42 is operated in an out-of-phase relationship with the chest cuff. The arguments are not well taken because Abramov in column 4, lines 32-36 clearly states that the maximum pressure in the face mask at the end of the inhalation phase is preferable about 20 cm of H<sub>2</sub>O (water column) and **5cm of H<sub>2</sub>O at the end of the exhalation phase**. It is the examiner's position that the 5 cm of H<sub>2</sub>O pressure in the mask at the end of the exhalation phase reads on the steady state air pressure component because it is well known that a live human being should have an inhalation immediately follow an end of an exhalation phase. Thus, Abramov does disclose the recited structure. Furthermore, applicant is reminded that the term "maintained throughout the entire breathing cycle" is irrelevant here because the claim languages do not support it.

### *Conclusion*

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



Justine R Yu  
Primary Examiner  
Art Unit 3764

JY  
July 2, 2003